

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6090

PETITION OF MIGUEL A PANIAGUA
(Hearing held September 21, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, October 6, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-C-1.323(b)(1). The existing single-family dwelling requires a variance of 1.60 feet as it is within 18.40 feet of the rear lot line and the petitioner proposes the construction of a one-story addition that requires a variance of three (3) feet as it is with five (5) feet of the side lot line and a variance of seven (7) as it is within thirteen (13) feet of the rear lot line. The required side lot line setback is eight (8) feet and the required rear lot line setback is twenty (20) feet.

Margarita and Miguel Paniagua, the petitioners, appeared with Rigoberto Herrera, their contractor, at the public hearing.

The subject property is Lot 3, Block 5, Viers Mill Village Subdivision, located at 11712 Goodloe Road, Silver Spring, Maryland, 20906, in the R-60 Zone (Tax Account No. 01171363).

Decision of the Board: Requested variances **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a one-story addition.
2. The petitioner testified that her house was built in 1948 and that the proposed construction is to add a dining room to the home. The petitioner testified that although their property is larger than the neighboring lots, it is difficult to add new construction to the property because of its shape. The petitioners' lot is 7,743 square feet.
3. Mr. Herrera testified that the property has an unusual shape and that the shape of the lot makes it difficult to add an addition to the property. Mr. Herrera testified that the new construction would expand the kitchen area and that the addition could not be added elsewhere

because the petitioners would like the renovated kitchen space at the rear of the house.

FINDINGS OF THE BOARD

Based upon the petitioners' binding testimony and the evidence of record, the Board finds that the variances must be denied. The requested variances do not comply with the applicable standards and requirements set forth in Section 59-G-3.1(a) as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that the petitioners' lot has no exceptional topographical or other conditions peculiar to the property. The Board further finds that the petitioners' lot exceeds the minimum lot size for the zone and that the property is larger than most of the adjoining and neighboring properties in the neighborhood. See, Exhibit No. 7 [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variances of 1.60 feet from the required twenty (20) foot rear lot line setback for the existing single-family dwelling, of three (3) feet from the required eight (8) foot side lot line setback for the construction of a one-story addition and of seven (7) feet from the required twenty (20) foot rear lot setback also for the construction of a one-story addition are denied.

The Board adopted the following Resolution:

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 6th day of October, 2005.

Katherine Freeman
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.